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10/066,361	01/31/2002	Louis Bigo	CU-2826	2484

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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/066,361

Applicant(s)

BIGO ET AL.

Examiner

F. Daniel Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second calibrated passageways connecting the outlet port to respective first and second inlet ports must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: Throughout the specification "pressure-free reservoir" (e.g. page 7 line 20) should be --atmospheric pressure reservoir--, since the pertinent prior art does not evacuate the fluid reservoirs. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Throughout the claims "pressure-free reservoir" (e.g. claim 1 line 10-11) should be --atmospheric pressure reservoir-- (see objection to the specification above). In claim 5 line 17-19 "means acting...to close off said communication means" should be --the communication valve...to close off the communication means--, since the communication valve (from claim 1 line 9-10) is the means.

The preamble of claim 1 claims a replenishing device, and includes details of a motor, a pump and two main pipes, with the main body of the claim including details of the replenishing valve and details of the main pipes. It is unclear if the limitations of the motor and pump are intended use and therefore do not limit the invention or not. In the dependent claims (e.g. claim 3), where the limitations of the pump and/or motor are

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specifically mentioned, the preamble is confusing, since they only claim the replenishing device, but is really claiming the closed circuit between the pump and motor. It is suggested that the preamble be changed to –A closed circuit...--.

Claim 6 and 11-15 claim details only shown in the first embodiment (fig 2, with claim 15 supported by pages 15-16), but depend from claim 1, which claims details not in the first embodiment. Claim 1 line 14-15 claims “an inlet suitable for being connected to the main pipe that is at the lower pressure”, which is shown by the inlet (194 of figure 5) of the second embodiment. But the first embodiment (figure 2) does not show an inlet that is connected to the main pipe that is at the lower pressure. Instead it shows two inlets (94, 94’), each of which is connected to a respective main pipe, when the respective main pipe is at the lower pressure. Claim 6 claims the order of the ports is first inlet port (connected to 12), outlet port (66) and second inlet port (connected to 14), which is the order of the first embodiment, but not the order of the second embodiment. Claims 11-14 claim first and second pressure thresholds to operate the communication valve, when the first and second main pipes, respectively, are connected to the communication valve by the replenishing valve, which is shown in the first embodiment by different strength springs (104, 106, e.g. page 15 line 29-34), but not in the second embodiment (since there is only one spring, 204, controlling the communication valve). Claim 15 claims first and second constrictions interposed between the inlet and outlet, when the first and second main pipes, respectively, are connected to the inlet, which is shown by the first embodiment (by different constrictions for the different inlets), but is not shown by the second embodiment. Since claim 1 has a limitation that is not shown by the first embodiment and claims 6 and 11-15 have limitations only shown in the first embodiment, claims 6 and 11-15 are not supported by the specification.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Kersten et al (these claims are treated as if the pump and motor limitations are intended use and therefore is given no patentable weight, See 112 rejection above).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 3 is rejected under 35 U.S.C. § 103 as being unpatentable over Kersten et al in view of Weisenbach. Kersten et al discloses a closed circuit comprising a hydraulic motor (15) connected to a hydraulic pump (11) by first and second main pipes (13, 14), and a replenishing device, including a replenishing selector (24) and a communication valve (26) united in the same replenishing valve unit (i.e. same valve body), having an inlet (68) connected to one of the main pipes, which is at a lower pressure, wherein the communication valve allows the inlet to communicate with an outlet (e.g. 69), when pressure at the inlet reaches a given pressure threshold; and the outlet communicates with a reservoir (31); but does not disclose that an internal space of the hydraulic motor is connected between the replenishing unit and the reservoir.

Weisenbach teaches, for a closed circuit comprising a hydraulic motor (4) connected to a hydraulic pump (1) by first and second main pipes (7, 8), and a replenishing device, including a replenishing selector (22) and a communication valve (21), having an inlet (29) connected to one of the main pipes, which is at a lower pressure, wherein the communication valve allows the inlet to communicate with an outlet, when pressure at the inlet reaches a given pressure threshold; and the outlet communicates with a reservoir (12); that an internal space of the hydraulic motor is connected between the replenishing unit and the reservoir (column 2 line 22-24), for the purpose of cooling parts of the motor (column 2 line 26-28).

Since Kersten et al and Weisenbach are both from the same field of endeavor, the purpose disclosed by Weisenbach would have been recognized in the pertinent art of Kersten et al. It would have been obvious at the time the invention was made to one having ordinary skill in the art to connect an internal space of the hydraulic motor of Kersten et al between the replenishing unit and the reservoir, as taught by Weisenbach, for the purpose of cooling parts of the motor.

Claims 2 and 4, respectively, are rejected under 35 U.S.C. § 103 as being unpatentable over Kersten et al, and Kersten et al in view of Weisenbach, as applied to claim 3 above, respectively, and further in view of Gollner. Kersten et al and the modified Kersten et al discloses all of the elements of claims 2 and 4, respectively; but does not disclose that a constriction is interposed between the inlet and outlet, when the communication valve allows the inlet and outlet to communicate.

Gollner teaches, for a closed circuit comprising a hydraulic motor (15) connected to a hydraulic pump (12) by first and second main pipes (A, B), and a replenishing device, including a replenishing selector (16) and a communication valve (17, 19), having an inlet (29) connected to one of the main pipes, which is at a lower pressure, wherein the communication valve allows the inlet to communicate with an outlet, without a constriction (e.g. fig 1), when pressure at the inlet reaches a given pressure threshold; and the outlet communicates with a reservoir; the equivalence of interposing a constriction (20, fig 2) between the inlet and outlet, when the communication valve

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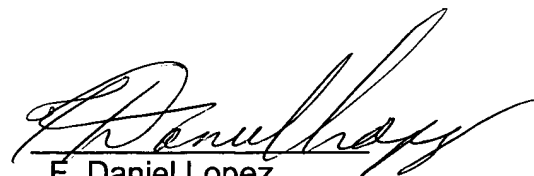
allows the inlet and outlet to communicate, for the purpose of more easily setting a quantity of fluid to be flushed through the replenishing device (column 1 line 25-30). Since Gollner teaches the equivalence of including and not including a constriction between the inlet and the outlet, it would have been obvious at the time the invention was made to one having ordinary skill in the art to interpose a constriction between the inlet and outlet of the modified Kersten et al, when the communication valve allows the inlet and outlet to communicate, as taught by Gollner, for the purpose of more easily setting a quantity of fluid to be flushed through the replenishing device

### ***Conclusion***

Claims 7, 8 and 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is (703) 308-0008. The examiner can normally be reached on Monday-Thursday from 6:30 AM -4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on (703) 308-1044. The fax number for this group is (703) 872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
April 29, 2003